



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MAC - 203764

PRELIMINARY RECITALS

Pursuant to a petition filed on November 22, 2021, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Chippewa County Department of Human Services regarding Medical Assistance (MA), a hearing was held on January 25, 2022, by telephone. The hearing was held open for one week to allow petitioner to forward Exhibit J.

The issue for determination is whether the PACU can compel payment of a public assistance debt.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Chippewa County. She received MA/BCP benefits.

2. On January 14, 2020, the agency sent petitioner a notice of BCP Overpayment in the amount of \$47,070.16 for benefits received 4/1/12 – 1/31/20. Exhibit A.
3. On January 29, 2020, petitioner filed an appeal to contest the BCP overpayment, and an administrative hearing was held on March 10, 2020. The matter was assigned DHA Case No. MOP-197748. A decision was issued by the Division of Hearings and Appeals on April 8, 2020, upholding the overpayment and dismissing petitioner's appeal. Exhibit B.
4. Dunning notices were sent to petitioner on June 2, 2020; August 4, 2020; and September 2, 2020. Exhibits F, G, and H.
5. On November 30, 2021, an Order to Compel Payment of Liability was sent to petitioner. The notice indicated the only issue that may be contested is "the determination by the department that you have not repaid the incorrect payment or have not entered into or complied with an acceptable agreement for repayment." The amount of the MA liability was indicated to be \$47,070.16. Exhibit I.
6. On October 20, 2021, petitioner filed her most recent appeal. Exhibit I.

DISCUSSION

BCP Overpayment

The DHA only has authority to review the merits of an appeal if there is jurisdiction to do so. DHA lacks jurisdiction to address the merits of a case when the appeal is not timely filed. The deadline to appeal a BCP overpayment was 45 days from the date of the notice. See, BCP Handbook, 29.2.1. The overpayment notice was dated January 14, 2020. Petitioner's instant appeal was filed on October 6, 2021, which is over 21 months from the date of the notice. As the appeal of the overpayment is untimely, DHA lacks jurisdiction to address the merits of the overpayment.

Moreover, petitioner already had an administrative hearing in March, 2020 regarding the merits of the BCP overpayment. See, Exhibit B. The result of that hearing was that the administrative law judge upheld the agency's overpayment finding. Her new appeal of the overpayment is precluded by the legal doctrines of issue and claim preclusion. See, *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995) ("a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand.").

Petitioner testified that the BCP overpayment had not in fact been addressed in the prior administrative hearing. The prior decision issued by the administrative law judge refutes such a claim. Her claim was also refuted by the agency representative who appeared at both the prior and instant hearing. He confirmed that the original hearing addressed the BCP overpayment.

Based on the credible evidence, I find that DHA lacks jurisdiction to address the merits of the BCP overpayment as the instant appeal was not timely filed. I further find that petitioner's new appeal of the overpayment is precluded by the legal doctrines of issue and claim preclusion.

Order to Compel Payment

Unlike the overpayment, petitioner timely appealed the Order to Compel Payment. Wis. Stat., §49.497(1m)(a) provides that if, after notice of incorrect payment is made, a recipient who is liable for an

incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability.

It was not contested at hearing that the BCP liability remained outstanding and that petitioner had not entered into a repayment agreement. As the debt is considered delinquent, the PACU was authorized to pursue further collection efforts. This is what was done with the filing of the Order to Compel. As indicated above, my review is limited in these types of actions. Based on the evidence in the record, I must conclude that the PACU correctly issued the Order to Compel.

Petitioner indicated that that she was disabled and had limited income. I understand that being required to repay the overpayment may create financial hardship, but I am without authority to base any decision on grounds of equity. It is the longstanding policy of the DHA that its administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp 540, 545 (E.D. Wis.1977). See also, Village of Silver Lake, Wis. v. DOR, 87 Wis. 2d 463 (Wis. App. 1978). DHA must limit its decisions to the law as set forth in statutes and administrative code provisions.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals does not have the authority to address the merits of the BCP/MA overpayment claim as the appeal was not timely filed, and it is precluded by the doctrines of issue and claim preclusion as the issue/claim was decided in a prior final decision issued by DHA in Case No. MOP-197748.
2. The PACU correctly issued an Order to Compel Payment of Liability.

THEREFORE, it is

ORDERED

That petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

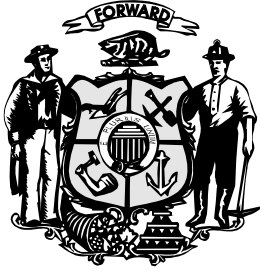
Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of February, 2022

\s 

Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 4, 2022.

Chippewa County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability